

ESTTA Tracking number: **ESTTA134768**

Filing date: **04/11/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Gas Pump Heaven, Inc.		
Entity	Corporation	Citizenship	Nebraska
Address	520 South 86th Circle Omaha, NE 68127 UNITED STATES		

Attorney information	Jennifer R. Petersen Koley Jessen P.C. One Pacific Place, 1125 S 103rd Street Suite 800 Omaha, NE 68124 UNITED STATES ip@koleyjessen.com Phone:402 390-9500
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Applicant Information

Application No	78849739	Publication date	04/03/2007
Opposition Filing Date	04/11/2007	Opposition Period Ends	05/03/2007
Applicant	Scott Anderson 980 73rd Street Windsor Heights, IA 50312 UNITED STATES		

Goods/Services Affected by Opposition

Class 011. First Use: 1991/09/27 First Use In Commerce: 1991/09/27
All goods and services in the class are opposed, namely: Glass lantern globes used for advertising petroleum products

Attachments	gas pump .PDF (4 pages)(119966 bytes)
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Signature	/jrp/
Name	Jennifer R. Petersen
Date	04/11/2007

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GAS PUMP HEAVEN, INC.,)	Opposition No. ____
)	
Opposer)	Serial No. 78/849739
)	
v.)	Filing Date: March 30, 2006
)	
)	Publication Date: March 14, 2007
)	
ANDERSON, SCOTT d/b/a TIME)	NOTICE OF OPPOSITION
PASSAGES, LTD.,)	
)	
Applicant)	
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In the matter of the application by Scott A. Anderson d/b/a Time Passages, Ltd., an Iowa sole proprietorship, with an address of 980 73rd Street, Windsor Heights, Iowa, 50309 ("Applicant"), filed on March 30, 2006, under Serial No. 78/849739, seeking registration of the mark "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." for use in connection with glass lantern globes used for advertising petroleum products in International Class 11, that application having been published in the Official Gazette on March 14, 2007 ("Applicant's Mark"). Opposer, Gas Pump Heaven, Inc., a Nebraska corporation with a business address at 5720 South 86th Circle, Omaha, Nebraska 68127 ("Opposer"), believes it will be damaged by the registration of the Applicant's Mark and hereby opposes the same.

The grounds for this opposition are as follows:

1. Opposer is a Nebraska corporation with a business address at 520 South 86th Circle, Omaha, Nebraska 68127.

2. The Applicant's Mark was published for opposition on March 14, 2007.

3. Since 2005, Opposer has been continuously using "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." as an aesthetic feature of its gas pump replicas.

4. Opposer places "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." on its gas pump replicas, at the same place the original antique gas pumps were marked with this designation, solely for the purpose of producing as accurate a replica as possible to the original antique gas pumps.

5. The Applicant claims that it has been using the "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." mark on its gas pump replicas since September of 1991.

6. Applicant also places "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." on its gas pump replicas at the same place the original antique gas pumps were marked with this designation. Like the Opposer, Applicant uses "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." solely for the aesthetic purpose of producing as accurate a replica as possible to the original antique gas pumps.

7. The Applicant's Mark is a replication of the original patent notification for Reg. Pat. No. 1,933,866, that was placed on the glass globes of original antique gas pumps by The Cincinnati Advertising Products Company, an Ohio entity that has been dissolved since December of 1955.

8. The Applicant's Mark does not "identify and distinguish" his goods from other sources of goods as is required for trademark registration. Rather, the Applicant's Mark is used as an ornamental feature of the gas pump replicas, placed as it would

have appeared on the original antique gas pumps, in order to produce an accurate replica.

9. "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." was originally placed for identification and patent notification purposes by The Cincinnati Advertising Products Company.

10. Because The Cincinnati Advertising Products Company has dissolved and consequently abandoned its intellectual property rights, Opposer and Applicant are entitled to the fair use of the "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO." marking for their respective gas pump replica businesses, to ensure accurate replication of original antique gas pumps that had globes marked with "CAPCOLITE NO. 216 THE CINN. ADV. PRODUCTS CO."

WHEREFORE, Opposer requests that Application Serial No. 78/849739 for the above-referenced class be denied and this Opposition be sustained.

This Notice of Opposition is filed via ESTTA, together with the government filing fee of \$300 for each class, for a total of a \$300 government filing fee.

Please charge any deficiency in filing fees to Deposit Account No. 50-0771.

Gas Pump Heaven, Inc.

Dated: April 11, 2007

By:

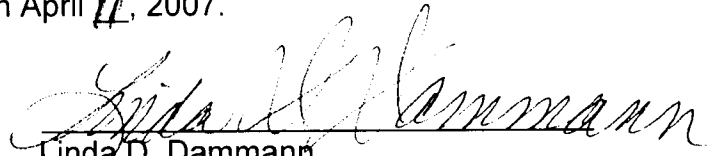


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via ESTTA to the United States Patent and Trademark Office on April 11, 2007.


Linda D. Dammann